

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7421 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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CADILA HEALTHCARE LIMITED

Versus

AHMEDABAD MUNICIPAL CORPORATION

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Appearance:

Mr.J.M.Thakore with  
MR KAMAL M MEHTA for Petitioners  
Mr.B.P.Tanna with Mr.Kariel for  
TANNA ASSOCIATES for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 29/06/1999

ORAL JUDGEMENT

1. The petitioner Company has filed this Special Civil Application seeking a writ, order or direction for quashing and setting aside the order dt.22.9.97 passed by the respondent - Corporation in the matter of charging octroi on the vehicles of the Company and/or restrain them from assessing, levying and collecting the octroi duty on the vehicles owned by the petitioner Company.

2. The learned counsel for the petitioner has submitted that in this matter Special Civil Application No.8022/96 had earlier been filed by the petitioner and

this Special Civil Application was decided on 7.8.97 by this Court (Coram :K.R.Vyas,J) by passing the following order:-

"It is not in dispute that the petitioner has filed a reply dated 17.10.1996 against the notice dated 3.10.1996 issued by the Assessor and Tax Collector wherein no order is passed. In view of this, without entering into the merits of the case, it would be in the fitness of things that the Municipal Commissioner of city of Ahmedabad may consider the reply dated 17.10.1996 of the petitioner. In view of this, the following directions are given:-

- 1) The commissioner shall decide the reply dated 17.10.1996 given by the petitioner within 4 weeks from the date of the receipt of the order;
- 2) It would be open for the petitioner also to file a separate representation with necessary materials to substantiate their case. If such a representation is filed, the same shall be considered alongwith the reply dated 17.10.1996 and an appropriate decision shall be taken by a reasoned order within 4 weeks thereafter;
- 3) Till the disposal of the representation and 15 days thereafter, the respondent shall maintain status quo.

In view of the above directions, Mr. K.N.Raval, learned advocate for the petitioner seeks leave to withdraw this petition. Permission granted. This petition stands disposed of as withdrawn. Notice is discharged."

3. Thereafter, the impugned communication dt.22.9.97 has been sent to the petitioner - Company under the signatures of Junior Legal Assistant (Octroi) whereby it has been conveyed that the vehicles are liable for octroi duty and the Company has been called upon to pay the octroi duty as well as the vehicle tax for all the vehicles. The learned counsel for the petitioner in the first instance has submitted that in fact in terms of this Court's order dt.7.8.97 the matter was to be decided by the Commissioner of the respondent - Municipal Corporation, but the matter was actually considered by the Octroi Superintendent, namely, Z.A.Sacha. It has also been pointed out that the said Octroi Superintendent heard the matter and called upon the Company to give the arguments in writing. The grievance raised is that the matter was in fact required to be decided by the Commissioner, but the same has not been decided by the

Commissioner and the impugned communication has been sent under the signatures of Junior Legal Assistant (Octroi) after the consideration of the matter by the Octroi Superintendent, as stated above. It is, therefore, contended that this communication dt.22.9.97 cannot be sustained because it is not in conformity with this Court's order dt.7.8.97. It has also been submitted that there is no delegation in favour of the Octroi Superintendent by the Commissioner and that such delegation is not possible according to the provisions of the Act and the Rules and whereas the order has been passed without hearing by the Commissioner himself, as ordered by this Court, the order cannot be sustained in the eye of law. Reference has also been made to S.69(2) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the B.P.M.C.Act") and it was submitted that even the Commissioner cannot make an order under sub-section (1) of S.69 delegating his powers, duties or functions under S.466 except with the prior approval of the Standing Committee.

4. In this regard Mr. Tanna appearing for the Municipal Corporation has submitted that the Junior Legal Assistant (Octroi) has conveyed the decision and so far as the objection that the matter was not considered by the Commissioner is concerned, he has referred to Office order No.3244 dt. 1.8.93 annexed with the reply as Annexure II at page 68 and has submitted that in exercise of the powers vested in the Municipal Commissioner under S.69(1) of the B.P.M.C.Act, the Assessor, which in the instant case was the Octroi Superintendent, was empowered to discharge the powers, duties and functions vested in the Commissioner as per the Schedule with this office order No.3244 and Item No.2 of the Schedule makes reference to the power to collect and recover the octroi duty on the basis of the declared market value and Octroi Standing order 8(2) with regard to the assessment of octroi when the original invoices are not produced or the invoices produced are unreliable. It has been submitted that these Standing Orders have already been approved not only by the Standing Committee but by the general body of the Municipal Corporation and that the same orders, had also been published and that the same had also been approved by the State of Gujarat. The Booklet containing the Octroi Rules and Standing Orders, as has been produced by Mr. Tanna, shows that the Octroi Standing Orders of the Ahmedabad Municipal Corporation under S.466(1)(A) of the B.P.M.C. Act were sanctioned by the Government of Bombay under the Local Self Government and Public Health Department Resolution No.6903/33(3) dt.22.7.52. On this basis it has been submitted that

even if the Commissioner himself has not considered the matter that is of no consequence because the Octroi Superintendent was competent to discharge the functions of the Commissioner and hence the direction given by this Court has been substantially complied with. Mr. Tanna has also submitted that in case the Court orders that the Commissioner himself may re-consider and pass the order, he has no objection.

5. I have considered the submissions in this regard and I find that it will not serve any useful purpose by now sending the matter back for re-consideration by the Commissioner because in terms of the Standing Order, the Octroi Superintendent could discharge the functions of the Commissioner and in the facts of this case, it cannot be said that the direction of this Court, that the matter may be considered by the Commissioner, has not been complied with. If the Octroi Superintendent was empowered with the powers of the Commissioner to consider the matter and he has considered the same and on that basis the communication dt.22.9.97 has been sent to the petitioners, the petitioners cannot have any legitimate grievance that it should have been heard by the Commissioner himself. So far as the requirement of S.69(2) is concerned, it may be pointed out that it is not necessary that in each and every case, a separate prior approval is required. When there are Standing Orders already in force and the same have been approved by the State Government and on that basis if the Octroi Superintendent had been empowered, it cannot be said that the prior approval was required to be taken separately when general standing orders are already existing and such Standing Orders have already been approved by the State Government. I do not find any illegality in exercise of the powers of the Commissioner by the Octroi Superintendent and I find that it was not at all necessary to obtain prior approval in each and every case in view of the general standing orders, which are already in force and the prior approval therein is inherent for the purpose. A reading of S.69(1) and (2) makes the position very clear that no exception can be taken to the exercise of powers by the Octroi Superintendent as an Assessor. This contention raised on behalf of the petitioner, therefore, fails and the same is hereby rejected.

6. So far as the merits of the case are concerned, it was submitted on behalf of the petitioners that the vehicles owned by the petitioner - Company are registered with the Regional Transport Office of Ahmedabad, but they have been classified in 4 categories as per the list

Annexures "A", "B", "C" and "D". It has been submitted that the vehicles mentioned in Annexure 'C' are those on which the octroi has been paid because they are being used in the City, but so far as the vehicles, particulars of which have been given in Annexures 'A', "B" and "D", are concerned, the case of the petitioner Company is that the same are not being used in the City. It has been submitted that the vehicles, which are included in Annexure 'A", are 53 in number and they are known as pool vehicles, which have been given to the Officers. Head office of the Company is outside the municipal limits of Ahmedabad Municipal Corporation on the Drive-in-Road and these vehicles are reposed in that office which is outside the Municipal limits. It is submitted that these vehicles are used only for the purpose of carrying the officers from their residence to the office and back to residence. The residence of such officers are also beyond the municipal limits and, therefore, these vehicles cross and pass through the Municipal Limits only for the purpose of carrying the officers from their residential houses to the office on the other end beyond the Municipal limits and again for dropping them to their residential houses after the duty. While making this submission, it is admitted before this Court that all these vehicles do enter and cross the Municipal limits at least 4 times a day; twice in the morning and twice in the evening after duty hours. Nevertheless it is submitted that they are reposed always in the office of the Company, which is beyond the municipal limits and, therefore, there is no question of payment of octroi on these vehicles as they are being reposed in the Company office outside the municipal limits. As regards the vehicles, as mentioned in Annexure "B", which are 32 in number, it has been pointed out that these vehicles have been allotted to Officers, who also reside outside the municipal limits and, therefore, the same logic, which applies to the vehicles classified in Annexure 'A", will apply to these vehicles and no octroi is required to be paid. Regarding the vehicles mentioned in Annexure "D", it has been submitted that though these vehicles are registered with the R.T.O., Ahmedabad for the Company, they are being used in other Cities like Bombay, Lucknow, etc. and, therefore, merely because they are registered with the R.T.O. of Ahmedabad, no octroi is leviable in respect of these vehicles on the Company. I called upon the learned counsel for the petitioners to answer as to whether any octroi has been paid on these vehicles in other cities, but the learned counsel for the petitioners was not in a position to make any statement in this regard as to whether in the respective cities octroi had been paid or not, but the fact remains that they are

registered with the R.T.O. of Ahmedabad for the petitioner-company. Mr. B.P.Tanna has submitted on behalf of the Corporation that all these vehicles included in Annexures "A" and "B" are used by the petitioner - Company within the Municipal limits of Ahmedabad and, therefore, they cannot be exempted from the payment of octroi and octroi is liable to be charged on these vehicles. It is also submitted with reference to S.147 of the B.P.M.C. Act that until the contrary is proved any goods imported into the City shall be presumed to have been imported for the purposes of consumption, use or sale therein unless such goods are conveyed from the place of import to the place of export by such routes, within such time, under such supervision and on payment of such fees therefore as shall be determined by the standing orders. Mr. Thakore has submitted that notwithstanding the case of the Corporation that these vehicles mentioned in Annexure "A" and "B" cross the municipal limits and notwithstanding the presumption under S.147, such presumption is rebuttable and he submits that on the basis of the classification of the vehicles and the use thereof, as has been held out by the petitioner - Company before this Court, such presumption stands rebutted and they are not liable to pay octroi because they are reposed outside the municipal limits and in this regard Mr. Thakore has also placed reliance on a decision of the Supreme Court in case of *Acqueous victuals Pvt.Ltd. v. State of U.P.*, reported in (1998) 5 SCC 474. Mr. Thakore has made a pointed reference to Para 15 of this Supreme Court decision wherein the Supreme Court has held that, "the word 'retention' is held to be a synonym with the word 'repose', meaning thereby the article concerned must finally rest within the municipal limits". In the light of the Judgment of the Constitution Bench in the case of *Burmah Shell Oil Storage & Distributing Co. of India Ltd. v. Belgaum Borough Municipality*, reported in AIR 1963 SC 906, the Supreme Court found that it was obvious that before a municipality can impose octroi duty on any commodity, it has to be shown that the commodity concerned was brought within the municipal limits for consumption, that is, for being totally used up so that it ceases to exist within the municipal limits themselves or it was to be used for an indefinite period within the municipal limits so that it ultimately rests within the municipal limits and does not go out subsequently, or the commodity concerned must be shown to have been brought within the municipal limits for the purpose of sale within the said limits.

7. I have considered the submissions made in this regard by both the sides and I find that so far as

vehicles mentioned in Annexures "A" and "B" are concerned, they are admittedly being used in the Municipal limits of Ahmedabad. Merely because after the use, the vehicles are parked outside the municipal limits, it would not mean that they are reposed outside the municipal limits. Vehicles are in fact put to use only in the municipal limits, more particularly when the Company itself says that these vehicles are being used as pool vehicles or allotted to officers of the Company to carry them from their residential houses to the office and to drop them back to their residential houses. It is admitted case of the petitioner - Company before this Court that the houses are situated at the other end of the municipal limits and the office of the Company is situated on another end of the Municipal limits and, therefore, these vehicles are actually used in the Municipal limits. If we go to the root of the matter, it comes to the question of actual use and there is no room for doubt that these vehicles are actually put to use in the Municipal limits and they only remain parked in the office of the Company outside the Municipal limits after their effective use during the day. Even otherwise, in such cases, when the offices are chosen to be kept just outside the Municipal limits only for the purpose of avoiding or evading the payment of octroi and the vehicles are in fact used in the Municipal limits, the argument cannot be accepted that merely because they are parked outside the Municipal limits, the Octroi is not liable to be paid. In the instant case, it is an admitted position that the office of the Company, where these vehicles are said to be reposed after their use, is just outside the municipal limits of Ahmedabad on Drive-in-Road itself. Even otherwise it is very difficult, rather not at all feasible and practically impossible to keep surveillance over the vehicles of such Companies, whose offices are situated outside the Municipal limits to see as to whether they are being actually put to use in the Municipal limits or not and no body like Corporation or any other agency can keep that vigil over the vehicles to see whether they actually enter the Municipal limits or not. Therefore, in such cases, when the vehicles are put to use by the Companies, the Octroi has to be paid and the Municipal Corporation has every right to charge the octroi in such cases on account of the use of these vehicles in the Municipal limits and the payment of the Octroi cannot be evaded merely by keeping the offices of such Companies outside the Municipal limits. It appears to be a plain and simple device to evade the octroi and the Revenue of the Municipal Corporation cannot be made to suffer on the basis of such devices. The case of Acqueous Victuals

Pvt. Ltd. (Supra), on which reliance has been placed by the petitioners, is not at all applicable. It was a case in which the question involved was with regard to the beverages packed in glass bottles and the bottles were not sold within the municipal limits. What was actually sold was the contents thereof. After the beverages were taken out of these bottles and the same were consumed, these very bottles were returned and were taken back and it was in the facts of that case and in the context, as aforesaid, that the Supreme Court had observed that before a Municipality can impose octroi duty on any commodity, it has to be shown that the commodity concerned was brought within the municipal limits for consumption. Here is a case of vehicles. These vehicles, as such, cannot be consumed. They can only be used and they are being effectively used within the Municipal limits and on that count, the claim of the Municipality to charge octroi on these vehicles is found to be justified and that right of the Municipal Corporation can not be defeated by saying that the vehicles are reposed outside the municipal limits after their use because use is admittedly in the Municipal limits. In the case of *Burmah Shell* (Supra), on which reliance was placed by the Supreme Court while deciding the case of *Acqueous Victuals Pvt.Ltd.* (Supra), the legal position was more than clear that the *Burmah Shell* was liable to pay the octroi on goods brought into local area (a) to be consumed by itself or sold by it to consumers direct, and (b) for sale to dealers who in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers bought them for use in the area or outside it and that the Company was, however, not liable to octroi in respect of goods which it brought into the local area and which were re-exported. In the instant case, it is not a case of re-export of these vehicles, which are included in Annexures "A" and "B". So far as these vehicles, as included in Annexures "A" & "B" are concerned, I hold that the Municipal Corporation is entitled to charge octroi thereon and the petitioner Company is under an obligation to pay the octroi for these vehicles, which are included in Annexures "A" & "B".

8. So far as vehicles, which are included in Annexure "D", are concerned, it has been admitted by the learned counsel for the Municipal Corporation that they are in fact being used in other cities. If that be so, even if these vehicles have been brought to Ahmedabad for the purpose of registration in R.T.O., Ahmedabad and they were re-exported to other cities, so far as Ahmedabad Municipal Corporation is concerned, it has no case for

charging any octroi on the vehicles included in Annexure "D". It is for the concerned Municipalities, where these vehicles are being used, to see as to whether the octroi had been paid or not and as to whether the octroi is chargeable on those vehicles in those cities according to law. Mr. Tanna has made a candid statement before this Court on behalf of the Municipal Corporation that the Municipal Corporation will not charge any octroi from the petitioner Company in respect of vehicles, which are included in Annexure "D" and which are not being used in the Municipal limits of Ahmedabad and are being used in towns other than Ahmedabad. In view of this statement made by Mr. Tanna, no orders are required to be passed by this Court in respect of the vehicles included in Annexure "D" or any other such vehicle which may be owned by the Company and which may be put to use in cities other than Ahmedabad, depending upon the satisfaction of the municipal Corporation on the factual aspect of their actual use in other cities or towns.

9. The result of the aforesaid discussion is that this petition fails and the same is hereby dismissed. Rule is discharged. Interim relief stands automatically vacated. No order as to costs.